Febeliec answer to the Elia consultation on the general conditions for balancing services (T&C FCR, T&C aFRR, T&C mFRR), restoration services (T&C RSP), voltage and reactive power services (T&C VSP), and services related to congestion management (T&C OPA, T&C SA)

Febeliec would like to thank Elia for this consultation on the general conditions for balancing services (T&C FCR, T&C aFRR, T&C mFRR), restoration services (T&C RSP), voltage and reactive power services (T&C VSP), and services related to congestion management (T&C OPA, T&C SA).

Febeliec strongly wants to state that it is at this point and with the available information impossible to form a general opinion on the proposed general conditions, without a clear view on the content of all the contracts for which these will be applied. Consultations on the terms and conditions for some of the mentioned services are on-going, yet not for others. Moreover, even for those services where consultations are on-going, the final texts of these terms and conditions are at this point not yet known and could require different general conditions as the one proposed, especially since some of the services mentioned are mandatory to grid users while others are voluntary. Under these current conditions, Febeliec in any case reserves itself the right to come back to the content of the general conditions in any point of time in the future whenever new information becomes available.

From an illustrative and certainly non-exhaustive perspective (cf. aforementioned comments), Febeliec has already some first remarks to the proposed general conditions, such as:

- The T&C's nor the contract seem to include a clear order of precedence between the T&C's, Part 1 (General Conditions) and Part 2 (Specific Conditions) of the contract;

- Art. I.1 (definitions):
    - reference is made to the definitions used in both federal and regional energy legislation and technical regulations as well as in European energy legislation, although no consistency whatsoever exists between these definitions, resulting in the fact that it will be unclear how a certain term, for which several non-consistent definitions exists, will need to be understood within the framework of the contract;
    - in the definition of "*Directe Schade*" reference is made both to "*contractbreuk en/of fout*", where only the non-compliance with a contractual obligation seems to be relevant for such contractual liability (see also art. I.6.2);
    - in the definition of "*Indirecte Schade*" reference is made i.a. to "*elke gebeurlijke schade*", "*elk verlies of nadeel*", which is far too wide as it targets any possible damage and not only indirect or consequential damage;

- Art. I.2.1. should differ between mandatory and voluntarily services;

- Reference is made several times (e.g. art. I.2.2, art. I.4.1) to possible other/subsequent parts of the contract. It is unclear to Febeliec which other/subsequent parts of the contract Elia has in mind;

- Art. I.4.1: Febeliec wonders whether it would not make sense to add the possibility that the contract will enter into force at another time than once it is signed by the Parties (e.g. "*behoudens indien uitdrukkelijk anders overeengekomen in de Bijzondere Voorwaarden*");

- Art. I.4.2: It is stated that the term of the contract is mentioned in Part 2 (Specific Conditions) but e.g. no clear term is mentioned in Part 2 of the OPA and SA Contract;

- The article concerning liabilities (Art. I.6), which does not seem to be well drafted (e.g. Art. I.6.2; the various references to "boetesysteem", "boetes" although liabilities and penalties are totally different concepts, etc) and is in any event very difficult to validate by lack of content of the specific contracts for which these general conditions will be used (e.g. the specificities concerning caps on compensation which is limited per contract,

but which might require a more extensive overhaul in case all balancing services will be bundled in one single contract);

- The article on emergency and force majeure (Art. I.7) requires according to Febeliec a major overhaul. Febeliec notices that Elia has introduced here the same text that it proposed for the Federal Grid Code Electricity (but which was rejected in the final text), while not having made any modifications taking into account the comments of stakeholders during the process with respect to the Federal Grid Code. Febeliec urges Elia to align at least the section on force majeure with the international standards in this field, instead of creating an Elia definition on the topic, which leads to seemingly arbitrary elements (e.g. the inclusion of a nuclear or chemical explosion and its consequences as force majeure);

- Also on the part of confidentiality (Art. I.8) does Febeliec have some reserves, as Elia easily states that it can share such confidential information with "operators of other grids or within the framework of contracts and/or rules with foreign grid operators", which according to Febeliec creates a possibility of misappropriation of confidential information and should, if any, only be possible insofar vital and insofar such information cannot be anonymized. The wording "afgesloten" in Art. I.8.4 is rather confusing and should be replaced by "beëindigd";

- On the part of the review of the contract (general and specific conditions) (Art. I.10), Elia refers to the processes foreseen therefore, yet it is unclear to Febeliec which processes would apply in case of these newly regulated contracts. In any case, Febeliec urges Elia to organise public consultations as well as stakeholder workshops whenever such modifications would be envisaged. As a basic principle, in case of an amendment of the contract, the service provider should in any event have the right to terminate the contract (surely if it relates to voluntary services) without the need, at is currently proposed by Elia, to demonstrate that the amendment of the contract has a "beduidende impact" on the contractual balance (too vague and who will assess this?);

- Art. I.11: Elia is requested to provide for each contract clear guidance on which faults will be considered to be serious faults possibly resulting in termination of the contract and a claim for compensation of damages;

- Finally, Febeliec wants to point out that in many instances (presumably in case of use of automatic references) references to articles often contain double use of "Art.".